

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT COTNER,

Petitioner,

v.

WARDEN BEAR,

Respondent.

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Case No. CIV-15-789-M

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2241 seeking a writ of habeas corpus. Petitioner has not been granted leave to appear *in forma pauperis* and the filing fee has not been paid. Chief United States District Judge Vicki Miles-LaGrange has referred this matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Presently before the Court are Petitioner's Motion for Hearing and his Motion for Order, **(ECF No. 6, 7)**. Petitioner has also filed a "Notice of Case Withdrawal" (ECF No. 8). "Under Rule 41(a)(1)(i) [now Rule 41(a)(1)(A)(i)], a Petitioner has an absolute right to dismiss without prejudice and no action is required on the part of the court." *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003). Accordingly, "once a Rule 41(a)(1) dismissal has been filed, the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them." *Id.* (internal quotation omitted); see also *Netwig v. Georgia Pacific Corp.*, 375 F.3d 1009, 1011 (10th Cir. 2004). Petitioner's unequivocal statement that he wants to dismiss will effectuate a dismissal. *See Janssen*, 321 F.3d at 1000; *Netwig*, 375 F.3d at

1010. Because the opposing party has not filed a responsive pleading or dispositive motion prior to the filing of Petitioner's Notice, dismissal of the Petition is required.

RECOMMENDATION

It is recommended that Petitioner's Notice of Case Withdrawal, (**ECF No. 8**), be deemed a notice of dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and that this action be **DISMISSED** without prejudice to re-filing. In light of the foregoing recommendation Petitioner's additional Motions, (**ECF Nos. 6 and 7**), filed prior to the notice of dismissal should be **DENIED** as **MOOT**.

The Petitioner is advised of his right to file specific written objections to this Report and Recommendation. 28 U.S.C. § 636; Fed. R. Civ. P. 72. Any such objections must be filed with Clerk of the District Court by **September 17, 2015**. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **DISPOSES OF ALL ISSUES** referred to the undersigned magistrate judge in this matter.

ENTERED on August 31, 2015.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE